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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMERICA; DISTRICT 2, UNITED MINE WORKERS OF AMERICA; and LOCAL NO. 998, UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	PAGE
Opinions Below and Jurisdiction	1
Statutes Involved	2
Question Presented	3
Statement of Case	3
Reasons for Denying the Writ	6
A. The Decision Below is Consistent with Federal Labor Policy and Applicable Decisions of this Court	6
B. The Decision Below is Not in Conflict With Any Decision of Another Court of Appeals or the National Labor Relations Board	10
Conclusion	14
Appendix A	15

TABLE OF CITATIONS

AFL v. Swing, 312 U.S. 321 (1940)	12
Amstar Corporation v. Amalgamated Meat Cutters, 468 F.2d 1372 (5th Cir. 1972)	10, 11, 12
Armco Steel Corp. v. United Mine Workers, 505 F.2d 1129 (4th Cir. 1974)	10, 13
Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970)	5, 6, 8, 9, 10, 11, 13
Buffalo Forge Co. v. United Steelworkers, ... F.2d ....., 89 LRRM 2303 (1973)	10, 11, 12
Cooper Thermometer, 154 NLRB 502 (1965)	12
Gary-Hobart Water Corp., 210 NLRB No. 87, 86 LRRM 1210, *enf'd sub nom.* Gary-Hobart Water Corp. v. NLRB, 511 F2d. 284 (7th Cir. 1975)	10, 13
Gary-Hobart Water Corp., 200 NLRB No. 98, 81 LRRM 1564 (1972)	12
Gateway Coal Company v. United Mine Workers, 414 U.S. 368 (1974)	5, 6, 7, 11, 13
Gateway Coal Company v. United Mine Workers, 466 F.2d 1157 (3rd Cir. 1972)	9

PAGE

Inland Steel Co. v. Local 1545, United Mine Workers, 505 F.2d 293 (7th Cir. 1974) 10, 13

Island Creek Coal Company v. United Mine Workers, 507 F.2d 650 (3rd Cir. 1975) 10

Keller—Crescent Co., Div. of Mosler, 217 NLRB No. 100, 89 LRRM 1201 (1975) 10

NAPA Pittsburgh v. Automotive Chauffeurs, 502 F.2d 321 (3rd Cir. 1974), *cert. denied,* 419 U.S. 1049 (1974) 8

NLRB v. Rockaway News Supply Co., 345 U.S. 71 (1953) 12

Operating Engineers v. Flair Builders, Inc., 406 U.S. 487 (1972) 7

Pilot Freight Carriers v. Teamsters, 497 F.2d 311 (4th Cir. 1974), *cert. denied,* 419 U.S. 869 (1974) 8

Redwing Carriers, 137 NLRB 1545, *enforced* 325 F.2d 1011 (D.C. Cir. 1963) 12

Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 11

United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960) 11

United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 5, 6, 11

United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 11

Wilmington Shipping Co. v. Longshoremen, ... F.2d ....., 86 LRRM 2846 (4th Cir. 1974), *cert. denied,* 419 U.S. 1022 (1974) 8

PAGE

STATUTES AND OTHER AUTHORIES

Elkouri & Elkouri, How Arbitration Works, 154-159 (3rd Ed., 1973) 7

Labor-Management Relations Act

Section 203(d)—29 U.S.C. §173(d) 2, 6, 8, 9, 11

Section 301—29 U.S.C. §185 ..... 3, 4, 6, 9, 12

Section 301(a)—29 U.S.C. §185(a) 2

National Labor Relations Act

Section 7—29 U.S.C. §157 ..... 2, 12

Section 8(a)(1)—29 U.S.C. §158(a)(1) 2, 12

Section 8(a)(3)—29 U.S.C. §158(a)(3) 2, 12

Norris-LaGuardia Act

Section 2—29 U.S.C. §102 ..... 2, 15

Section 4—29 U.S.C. §104 2

Section 8—29 U.S.C. §108 ..... 2, 9, 16

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OPINIONS BELOW AND JURISDICTION

The opinions below and the jurisdictional requisites are adequately set forth in the Petition.

STATUTES INVOLVED

Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, Sections 7 and 8(a) of the National Labor Relations Act, 29 U.S.C. §157 and §158(a) and Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. §185(a), are set forth in the Petition as Appendix D.

Also involved are Section 203(d) of the Labor-Management Relations Act, 29 U.S.C. §173(d), which provides in pertinent part:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ."

and Sections 2 and 8 of the Norris-LaGuardia Act, 29 U.S.C. §102 and §108, attached hereto as Appendix A.

QUESTION PRESENTED

Where a labor agreement contains a grievance/arbitration clause providing for settlement of disputes as to its meaning and application, matters not specifically mentioned and local trouble of any kind, is a dispute as to whether employees may engage in a work stoppage over the presence of non-employee pickets from the same union an arbitrable matter upon which a federal court may order arbitration and enjoin a resulting work stoppage under §301 of the Labor-Management Relations Act of 1947?

STATEMENT OF CASE

Respondent, Island Creek Coal Company ("Island Creek"), owns and operates two large deep mines, the Bird No. 2 and Bird No. 3 Mines, in Somerset County, Pennsylvania. Petitioners, United Mine Workers of America (the "UMW"), its administrative division District 2 and its Local Union No. 998 represent miners at the Bird Mines for collective bargaining purposes. At all times material, Island Creek and the petitioning unions were parties to the National Bituminous Coal Wage Agreement of 1971 (the "1971 Agreement"), covering terms and conditions of employment for employee-members at the Bird Mines.

The 1971 Agreement contains in Article XVII, Settlement of Disputes, a detailed grievance procedure, culminating in compulsory, final and binding arbitration, for resolution of ". . . differences . . . between the Mine Workers and the Employer as to the meaning and application of the provisions of [the] agreement . . .," ". . . differences . . . about matters not specifically men-

tioned in [the] agreement . . ." and ". . . any local trouble of any kind [arising] at the mine . . . ." Article XX, Maintain Integrity of Contract, further provides that ". . . all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article of this agreement unless national in character . . . ."

This case has its genesis in a widespread April 1974 work stoppage by UMW District 2 members in protest of an umpire's handling of a discharge arbitration at Florence Mining Company's No. 2 Mine in western Pennsylvania. (Pet. App. C pp. 14-15). On April 11, 1974, non-employee UMW pickets from other mines in the area appeared at the common entrance to the Bird Mines and requested Island Creek employees to join the strike. Local 998 employee-members refused to report for work. (Pet. App. C p. 15).

On April 12, 1974, Island Creek filed a complaint in the district court under Section 301 of the Labor-Management Relations Act (29 U.S.C. §185), to enjoin the work stoppage and compel arbitration of the underlying dispute as to whether employee-members of Local 998 were required to cross the picket lines and report for work. A Temporary Restraining Order issued and, after hearing, Preliminary Injunction was entered on April 17, 1974. (Pet. App. B, C pp. 11-18).

In its Memorandum and Order, the district court, upon the basis of the evidence, found that the refusal of plaintiff's employees to cross picket lines was an arbitrable dispute under the contract; that the work stoppage was, therefore, a violation of the agreement; and that Island Creek was irreparably injured by continued closing of the mines. (Pet. App. C pp. 14-18).

As it had during hearing, the district court took notice of the presence of work stoppages at many other mines in western Pennsylvania and its knowledge of and participation in related cases arising from this widespread unrest. The district court concluded that the solution to the problem lay in the ability of the International Union to enforce the terms and conditions of the contract and directed petitioners to do so by refraining from work stoppages and utilizing the contract grievance/arbitration procedures in compliance with these terms and conditions. (Pet. App. C p. 17).

The Court of Appeals for the Third Circuit, applying the presumption of arbitrability of *Steelworkers v. Warrior & Gulf,* 363 U.S. 574 (1960), and its specific application to the National Bituminous Coal Wage Agreement in *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974), found the employee-members' refusal to work when fellow UMW pickets were present an arbitrable issue under the broad Settlement of Disputes provisions of the 1971 Agreement as to which the union had an implied obligation not to strike. (Pet. App. A pp. 1-10).

The Circuit Court then affirmed the granting of injunctive relief upon the basis of *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970), while reemphasizing its holding bottomed upon the usual breadth of the agreement's grievance/arbitration clause. (Pet. App. A. p. 7).

Timely petition for rehearing and suggestion for rehearing *en banc* was denied. Petition for Certiorari followed.

REASONS FOR DENYING THE WRIT

A. The Decision Below is Consistent with Federal Labor Policy and Applicable Decisions of this Court.

The decision below, resting upon the 1971 Agreement's sweeping Settlement of Disputes provision, is clearly correct and consistent with the decisions of this Court in *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970), and *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974).

Federal labor policy is premised upon the principle that industrial stability is best fostered by voluntary settlement of labor disputes without resort to self-help and industrial strife. Section 203(d) of the Labor-Management Relations Act of 1947, 29 U.S.C. §173(d), manifests the congressional resolve that:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."

Where suit is brought to compel arbitration under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185, under *Steelworkers v. Warrior & Gulf Co.,* 363 U.S. 574, 582-583 (1960):

> ". . . An order to arbitrate the particular grievance should not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

The 1971 Agreement's Settlement of Disputes provision provides for final and binding arbitration of disputes "as to the meaning and application of the provisions of [the] agreement," disputes "about matters not specifically mentioned in [the] agreement" and "any local trouble of any kind aris[ing] at the mine." In Article XX the parties "agree and affirm . . . that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article . . .," excepting only disputes "national in character" from the arbitration obligation.

As in *Operating Engineers v. Flair Builders, Inc.,* 406 U.S. 487, 491 (1972), "[t]here is nothing to limit the scope of this coverage or to except any dispute or class of disputes from arbitration." Accordingly, this Court has held that the arbitration obligation of the National Bituminous Coal Wage Agreement "gives rise to an implied no-strike duty." *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974).

The controversy as to whether Island Creek employees violated this implied no-strike obligation by engaging in a work stoppage over the presence of fellow UMW pickets at the mine is clearly an arbitrable matter under the 1971 Agreement.

Local 998 members could—and should—have reported for work and then filed a grievance disputing their contractual obligation to do so in accord with the "obey now—grieve later" tenet which prevades the common law of arbitration.[1] Elkouri & Elkouri, *How Arbitration Works,* 154-159 (3rd Ed., 1973).

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1. Significantly, the record indicates that all Local 998 officers who testified conceded on cross-examination that the labor agreement required them to cross the picket line and report for work. (R. 112a, 130a, 134a).

This being the case, the district court clearly had authority under *Boys Markets v. Retail Clerks,* 398 U.S. 235 (1970), to enjoin the work stoppage and to order arbitration of the controversy concerning Local 998's refusal to cross the picket lines.

Boys Markets contemplates that issuance of injunctive relief is within the sound discretion of the trial judge when a dispute "arising over the application or interpretation of an existing collective bargaining agreement" (29 U.S.C. §173(d)) is subject to adjustment and arbitration under the agreement and injunctive relief is warranted upon ordinary principles of equity. 398 U.S. at 254.

While Petitioners argue that under *Boys Markets* the granting of injunctive relief is proper only when a work stoppage is literally "over a grievance,"[2] this narrow position is inconsistent with the firmly established arbitration maxim of "obey now—grieve later" and this Court's finding that a later action for damages "is no substitute for an immediate halt to an illegal strike . . ." and "would only tend to aggravate industrial strife and delay an early resolution of the difficulties between employer and union." 398 U.S. at 243.

Petitioners' contrary position, with its corollary that the propriety of employee-members honoring their

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2. This argument for grant of certiorari has been previously before this Court—and rejected—in *Pilot Freight Carriers v. Teamsters,* 497 F.2d 311 (4th Cir. 1974), *cert. denied,* 419 U.S. 869 (1974); *Wilmington Shipping Co. v. Longshoremen,* ..... F.2d ....., 86 LRRM 2846 (4th Cir. 1974), *cert. denied,* 419 U.S. 1022 (1974); and *NAPA Pittsburgh v. Automotive Chauffeurs,* 502 F.2d 321 (3rd Cir. 1974), *cert. denied,* 419 U.S. 1049 (1974).

fellow members' picket lines is unreviewable by court or board until a later action for damages or proceedings arising from possible discipline of the employees involved, is nothing more than a request for judicial sanction of a union's avoidance of bargained-for no-strike pledges through the subterfuge of non-employee pickets. Such withholding of effective judicial relief in an entire category of premeditated work stoppages "not only runs counter to our national policy of promoting labor stability but opens new and hazardous avenues in labor relations for unrest and strikes." *Gateway Coal Co. v. United Mine Workers,* 466 F.2d 1157, 1162 (3rd Cir. 1972) (Rosenn, J. dissenting).

This result is contrary to the congressional policy set forth in Section 203(d) of the Labor-Management Relations Act and is neither contemplated nor required by the Norris-LaGuardia Act—which itself manifests in Section 8 a policy determination that labor disputes should be peacefully settled through voluntary adjustment and arbitration. See, 29 U.S.C. §108; *Boys Markets, supra,* 398 U.S. at 242.

The work stoppage of Local 998 employees here had the practical and intended effect of pressuring Island Creek to yield its position on the arbitrable dispute concerning employees' duty to report for work despite the presence of non-employee UMW pickets, and thus injunctive relief properly issued to preserve the integrity of the labor agreement and the arbitral process.

The holding below correctly enforces the parties' bargained-for obligation while accommodating the policies underlying Sections 203(d) and 301 of the Labor-Management Relations Act with the anti-injunction provisions of Norris-LaGuardia.

B. The Decision Below is Not in Conflict With Any Decision of Another Court of Appeals or the National Labor Relations Board.

The precise issue here presented, whether a federal court, under *Boys Markets* and the 1971 Agreement, may order arbitration and enjoin a work stoppage of mine worker employees over the presence of non-employee UMW pickets at the mine, has been uniformly answered in the affirmative by the Third,[3] Fourth[4] and Seventh[5] circuits on similar facts.

Despite this uniformity of the Circuits, Petitioners allege that the decision below involves "the question of enjoinability of foreign-picket work stoppages" and conflicts with the Fifth Circuit's decision in *Amstar Corporation v. Amalgamated Meat Cutters,* 468 F.2d 1372 (5th Cir. 1972), the Second Circuit's decision in *Buffalo Forge Co. v. Steelworkers,* ..... F.2d ....., 89 LRRM 2303 (1973), and the NLRB holdings in *Gary-Hobart Water Corp.,*[6] and *Keller-Crescent Co.,*[7] *Div. of Mosler.*

Review of these decisions reveals that there is no direct conflict in fact or law, and that the approach of the Court below is consistent with that of the NLRB.

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3. *Island Creek Coal Company v. United Mine Workers,* 507 F.2d 650 (3rd Cir. 1975).

4. *Armco Steel Corp. v. United Mine Workers,* 505 F.2d 1129 (4th Cir. 1974).

5. *Inland Steel Co. v. Local 1545, United Mine Workers,* 505 F.2d 293 (7th Cir. 1974).

6. 210 NLRB No. 87, 86 LRRM 1210, *enf'd sub nom. Gary-Hobart Water Corp. v. NLRB,* 511 F.2d 284 (7th Cir. 1975).

7. 217 NLRB No. 100, 89 LRRM 1201 (1975).

The Fifth Circuit's reasoning in *Amstar,* decided prior to this Court's holding in *Gateway,* commences with refusal to apply the *Steelworkers Trilogy's*[8] broad presumption of arbitrability and concludes with a myopic misreading of *Boys Markets*—that only a strike literally "over a grievance" may be enjoined—which ignores both the language of §203 of the Labor-Management Relations Act and the factual underpinnings of *Boys Markets* and *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962).[9]

Consistent with §203(d) and the national policy of peaceful resolution of labor disputes, all that *Boys Markets* requires is that the dispute be subject to adjustment and arbitration under the labor agreement. See, pp. 8-9, *supra.*

Buffalo Forge compounds the errors of *Amstar* by relying so blindly upon the "over a grievance" language that the critical finding—whether the picket line dispute is or is not arbitrable—was never made.[10]

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8. *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960).

9. The quoted language, appearing at 398 U.S. 254, is from Justice Brennan's dissenting opinion in *Sinclair* (370 U.S. 195 at 228).

10. The Second Circuit reasoned that ". . . it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining [strikes not seeking to pressure the employer to yield on a disputed issue]," (Petition, App. 28), but then failed to apply it reasoning to the facts before it, where the strike clearly sought to pressure the employer to yield on the disputed issue of whether employees were required by contract to cross the picket lines, report for work and grieve through the applicable contract provisions.

Neither *Amstar* nor *Buffalo Forge* involved labor agreements which contained sweeping grievance/arbitration provisions like those found in the 1971 Agreement, nor were the pickets there, as here, members of an international union signatory to the same national agreement.[11]

The National Labor Relations Board holdings cited by Petitioners are inapposite upon the same reasoning.

Although *Gary-Hobart* involved refusal of employees to cross picket lines, the issue was not arbitrability—and hence enjoinability—of a dispute under §301, but rather whether the employer violated §§ 8(a)(1) and (3) of the National Labor Relations Act by infringing upon that statute's §7 right of "mutual aid or protection."[12]

Significantly, the Board initially deferred to arbitration, 200 NLRB No. 98, 81 LRRM 1564 (1972), and decided the case only when the employer refused to arbitrate. Then, in holding on the merits that there had been

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11. Petitioners' characterization of the picket line at Island Creek's Bird Mines as "foreign" is clearly inappropriate as to Petitioners' District 2 and the International Union, whose members constituted the picket line. (R. 103a, 109a, 133a, 146a).

12. §7 has been judicially interpreted to confer an implied right to honor picket lines in circumstances where (1) the picket line is not unlawful, *AFL v. Swing*, 312 U.S. 321 (1940), (2) the employer lacks legitimate and substantial business reasons for taking action against the employees involved, *Redwing Carriers*, 137 NLRB 1545, *enforced* 325 F.2d 1011 (D.C. Cir. 1963); *Cooper Thermometer*, 154 NLRB 502 (1965), or (3) the collective bargaining agreement does not contain express or implied obligations to the contrary, *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71 (1953).

no contractual waiver of picket line rights, both the Board and the Seventh Circuit specifically cited and distinguished cases involving the National Bituminous Coal Wage Agreement "on the basis of the very broad arbitration clause included in the contract which governed disputes . . ." 210 NLRB No. 87, 86 LRRM at 1214. See also *Gary-Hobart Water Corp. v. NLRB, supra,* 511 F.2d at 288, 289.

Contrary to Petitioners' assertions, the NLRB's reasoning in picket-line cases arising under the National Labor Relations Act emphasizes the correctness of the holding below and is consistent with ***Boys Markets, Gateway*** and the holdings in ***Armco Steel Corp. v. United Mine Workers, supra,*** and ***Inland Steel Co. v. United Mine Workers, supra.***

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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APPENDIX A

Section 102 of the Norris-LaGuardia Act, 29 U.S.C. §102, provides in pertinent part:

"§102. Public policy in labor matters declared

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

Appendix A.

Section 108 of the Norris-LaGuardia Act, 29 U.S.C. §108, provides in pertinent part:

> "§108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief
>
> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."